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No. 86-491

IN THE

Supreme Court of the United States

OCTOBER 1986

FRANCIS M. GIANCOLA

and

CHARLES A. PIFER, II,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the currency reporting laws and regulations thereon, 31 U.S.C. §5313(c), should be construed broadly so as to criminally punish the structuring of currency transactions in amounts of less than $10,000.00. The law on this issue is presently subject to conflicting opinions issued by the Eleventh Circuit Court of Appeals in this case and the First, Eighth and Ninth Circuit Courts of Appeals in the cases of *U.S. v. Anzalone,* 766 F.2d 676 (1st Cir. 1985); *United States v. Varbel,* 780 F.2d 758 (9th Cir. 1986); and, *United States v. Larson,* 796 F.2d 244 (8th Cir. 1986).

2. Whether a conviction for conspiracy to defraud the United States by structuring currency transactions in amounts of less than $10,000.00 so as to avoid the reporting requirements require proof of specific intent or *mens rea* on the part of defendant. Stated specifically, must the government show that the defendant knew that it was illegal to structure currency transactions so as to avoid the legal requirements of filing a currency transaction report or may a conviction stand simply upon proof that a defendant chose to structure currency transactions in amounts of less than $10,000.00 without knowing such conduct to be illegal.

PARTIES

FRANCIS M. GIANCOLA and CHARLES A. PIFER, II, are the parties to this action as well as the United States of America. The parties were the same in the Eleventh Circuit Court of Appeals.

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IN THE

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No.

FRANCIS M. GIANCOLA

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v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioners, FRANCIS M. GIANCOLA and CHARLES A. PIFER, II, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit in this cause.

OPINION BELOW

The opinion of the Court of Appeals is reported at 783 F.2d 1549 (11th Cir. 1986). A copy of the opinion is attached as Appendix A., The Court of Appeals denied the suggestion for rehearing *en banc* on July 29, 1986. A copy of the Order is attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S.C. §1254(1). The date of the Court of Appeals opinion was March 12, 1986, and the order denying the suggestion for rehearing *en banc* was entered on July 29, 1986.

STATUTORY AND OTHER PROVISIONS INVOLVED

Title 31, U.S.C. §5313 provides in pertinent part:

> (a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

The criminal penalties for violation of the currency reporting laws including section 5313(a) are contained in 31 U.S.C. §5322, which provides:

> (a) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5313 of this title or a regulation prescribed under section 5315) shall be fined not more than $1,000.00, imprisoned for r ore than one year, or both.

> (b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5313 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a pattern of illegal acivity involving transactions of more than $100,000.00 in a 12-month period, shall be fined not more than $500,000.00, imprisoned for not more than 5 years, or both.

The conspiracy statute is set forth in Title 18 U.S.C. §371 and reads as follows:

> If two or more persons conspire either to commit any offense against the United States or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such pesrons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000.00 or imprisoned not more than five years, or both.

The pertinent regulations issued by the Secretary of the Treasury pursuant to Title 31 U.S.C. §5313, which were effective during the time at issue here are:

> 31 C.F.R. §103.22(a)
>
> Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary and all information called for in the forms shall be furnished.

A "Transaction in Currency" is defined in the section on "Meaning of Terms" (31 C.F.R. §103.11) as follows:

> Transaction in Currency. A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, draft, wire transfer or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

A "Financial Institution" is defined as follows:

> Each agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below:

Finally, a "Bank" is defined as follows:

> Bank. (a) Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below: . . .

STATEMENT OF THE CASE

The Petitioners purchased numerous cashiers checks and money orders from various financial institutions in the central Florida area during two brief periods of time. The first series of purchases occurred between October 28, 1983, and October 31, 1983, and the second series of purchases occurred between June 11, 1984, and June 27, 1984.

The transactions involved Petitioners' purchasing of cashiers checks or bank money orders with currency in various banks and branches of the banks. No transaction in any one bank office was equal to or over $10,000.00. In making the purchases, one Petitioner was in a particular bank and various names were related as remitter on the checks, including in some instances Petitioners' own names.

The Government produced seventy-five (75) bank tellers to testify about the transactions at issue. Several of the tellers failed to identify the Petitioners as the parties involved in the transaction that they handled. While the Petitioners were identified by numerous tellers, the banking witnesses also identified trial jurors, defense counsel and spectators as the men involved in these transactions. For purposes of this Petition, however, it is sufficient to note that Petitioners were identified as the people taking part in most of the transactions alleged by the Government.

The transactions in October, 1983, totaled in excess of $88,000.00 and in June, 1984, totaled $179,000.00. The testimony concerning each transaction clearly revealed that each transaction was conducted pursuant to normal banking practices. At no time did either Petitioner ask a bank employee to take any action in relation to a currency transaction report (CTR). Furthermore, the subject of CTR's was never mentioned to either Petitioner by any bank employee. The witnesses also clearly developed that no signs or notices of any type were displayed to the public concerning currency transactions.

The Petitioners were indicted by a Federal Grand Jury in Orlando, Florida and charged with twenty-two counts. A copy of the Indictment is attached as Appendix C. Twenty counts alleged violations of section 1001 by the Petitioners' structuring currency transactions so as to avoid currency transaction report (CTR).The twenty counts charging section 1001 violations grouped branches of the same institution together to reach a $10,000.00 transaction. The substantive counts were dismissed by the Court at the close of the Government's case. The trial court reasoned that these regulations and banking practices did not require that branches be lumped together so as to reach the $10,000.00 CTR threshold. The Court

reasoned therefore that no transaction triggered to reporting requirement of Title 31 U.S.C. §5313(a).

The remaining two counts charged Petitioners with conspiracy to violate section 1001 and to defraud the Government of its right to the CTR. The trial court allowed these two counts to go to the jury, which resulted in the convictions now at issue.

The evidence at the trial was clear that both Petitioners structured transactions so as to avoid the creation of a CTR. There was no evidence, however, that either Petitioner was advised or knew that it was illegal to structure transactions so as to avoid a $10,000.00 transaction and thereby the obligation of the bank to file a CTR.

The Petitioners were each sentenced to five years incarceration on both counts to run concurrently. A copy of the Judgment and Probation/Commitment Orders are attached as Appendices D and E for Pifer and Giancola, respectively. Both Petitioners commenced service of sentence and then were released pending appeal following the Circuit Court of Appeals decision interpreting the bail reform provisions of 1984. *See, U.S. v. Giancola,* 754 F.2d 898 (11th Cir. 1985).

REASONS FOR GRANTING PETITION

The Petitioners have been convicted for structuring currency transactions so as to avoid the filing of a CTR. The conduct which has resulted in a five-year term of incarceration is perfectly legal if performed in Maine, New Hampshire, Massachusetts or Rhode Island or any of the states within the Eighth and Ninth Federal Appellate Circuits. This discrepancy is due to a conflict in the law involving currency transactions that exist following the decisions of this case in the Eleventh Circuit and the case of *United States v. Anzalone,* 766 F.2d 676 (1st Cir. 1985).

The Ninth Circuit has considered the issue of currency transaction reporting and has likewise ruled that conducted similar to that present in the instant case is not illegal. *See, United States v. Varbel,* 780 F.2d 758 (9th Cir. 1986); *United States v. Espriella,* 781 F.2d 1432 (9th Cir. 1986). Likewise, the Eighth Circuit is in conflict with the Eleventh Circuit. *See, U.S. v. Reinis,* 794 F.2d 506 (9th Cir. 1986).

The issues involved in currency reporting laws are complex and of extreme importance to the banking industry, law enforcement and every citizen. The Court should grant this Writ of Certiorari to consider this important issue and provide a clear pronouncement of the law, as well as to insure uniformity in the law's application.

The key issue here involves the Government's theory that it is illegal to structure currency transactions so as to avoid the currency reporting violation. Inter-related with this issue is the interpretation given to the term "financial institutiion" by the Eleventh Circuit in the instant case that resulted in the combining of branches of banks to reach the $10,000.00 reporting requirement. The holding that branches may be combined to reach the $10,000.00 reporting requirement fails to address the real issue. That issue was recognized by the First Circuit in *U.S. v. Anzalone, supra,* to be whether the law properly puts the citizens on notice that they may not structure transactions.

An analysis of the decision in *U.S. v. Anzalone* and the instant case reveals the underlying issues and the extent of the problem caused by the conflict in the Circuits. In *Anzalone* the defendant in one day had three transactions in one bank that totalled $25,000.00. No one transaction, however, exceeded $10,000.00. Following the first transaction, Mr. Anzalone had on separate dates a series of nine additional transactions totalling $75,000.00 and once again no one transaction exceeded $10,000.00.

The Court in *Anzalone* reversed the convictions and dismissed the indictment. The basis for its ruling was that the statute and regulations placed no duty on the individual to file a CTR and the statute did not clearly specify that transactions could be combined so as to foster the "structured" theory espoused by the Government. The Court also stated:

> We are required to conclude that the Reporting Act and its regulations, as they presently read, imposed *no duty* on Appellant to inform the Bank of the "structured" nature of the transactions here in question. The application of criminal sanctions to Appellant for engaging in the activities heretofore described violates the fair warning requirements of the due process clause of the Fifth Amendment.

The Court in *Anzalone* went on to point out that statute and regulations thereunder do not require the customer to file a CTR, or to disclose the fact of other currency transactions to the bank. The Court cited a report to Congress by the Comptroller General of the United States entitled "Bank Secrecy Act Reporting Requirements Have Not Yet Met Expectations, Suggesting Need for Amendment," GED 81-80, dated July 23, 1981. That report recognizes that no prohibition exists against a banking customer dividing up large currency transactions into amounts less than $10,000.00 to "circumvent" the reporting requirements. *U.S. v. Anzalone, supra,* at 681.

The instant case involved currency being exchanged for checks in various banks. No single transaction involved more than $6,500.00 in a bank office. In order to reach the $10,000.00 requirement, the Government combined transactions in branches of the same bank. This rational was

adopted by the Eleventh Circuit in affirming the convictions.

The logical and legal weaknesses of the Eleventh Circuit's position are clear. The real issue is whether transactions can be combined to impose criminal sanctions. The *rationale* of *Anzalone* on this issue is persuasive and should control. The Defendant in *Anzalone* had three transactions on one day in the same bank. Such conduct was held not to be a crime because the law placed no duty on the customer to notify the bank of the transactions nor did the law prohibit structuring the transactions.

The Eleventh Circuit ruled that transactions in separate branches of a bank are the same as transactions in a single office of a bank. This ruling is contrary to the definition of a bank and financial institution under the regulations. Those regulations contained in 31 C.F.R. §103.11 define banks and financial institutions as "each agency, branch or office." The regulations therefore define each separate office as a separate bank or financial institution. This definition comports with the evidence at trial which revealed that none of the banks ever inquired as to whether the customer had currency transactions with other branches of the bank on the same day. Without such an inquiry or some other notice to the public calling for that information, the banks could not possibly comply with the regulations in properly filling out the CTR if those regulations combined branches.

In ruling that branches are to be combined and defined as a bank for the purpose of the $10,000.00 currency reporting requirement, the Eleventh Circuit ignores the underlying constitutional issue recognized in *U.S. v. Anzalone, supra.* Specifically, the law does not prohibit

structuring transactions and does not put the defendant on notice that his conduct is criminal.

The only difference between *U.S. v. Anzalone, supra,* and the instant case is that in *Anzalone* transactions occurred in the same office of a bank while in this case the transactions occurred in separate branches of the same bank. The failure of the law in proscribing the structuring of transactions is the same in either event and represents the key issue.

The recent case of *United States v. Larson,* 796 F.2d 244 (8th Cir. 1986) presents an almost identical factual situation to the instant case. In *Larson* the defendant was convicted of violation of 18 U.S.C. § 1001 by structuring transaction in various branches of the banks in amounts of under $10,000.00. The combination of transactions in branches, however, totaled over $10,000.00. The Eighth Circuit did not discuss the case of *U.S. v. Giancola, supra,* but recognized the position of the Eleventh Circuit which was set forth in *United States v. Tobon-Builes,* 706 F.2d 1092 (11th Cir. 1983). The Court in *United States v. Larson, supra,* rejected the position of the Eleventh Circuit and reversed the convictions.

The fact that Petitioners here stand convicted of conspiracy rather than the substantive offenses is of no importance. The underlying objective of the conspiracy according to the government was to defraud the government of information under the currency reporting laws. If there is no violation of substantive currency reporting laws then there can be no conspiracy conviction. This concept was recognized in the case of *United States v. Porter,* 591 F.2d 1048 (5th Cir. 1979) in relation to conspiracy to defraud the government in relation to medicare payments. This theory was specifically applied to the currency transaction laws in a conspiracy charge by the Ninth Circuit in

United States v. Espriella, 781 F.2d 1432 (9th Cir. 1986). In order for an agreement to constitute a criminal conspiracy the purpose of the agreement must be to frustrate some specific duty or obligation established by statute or regulation.

In the case of *Viereck v. United States,* 318 U.S. 236, 63 S. Ct. 561, 87 L.Ed 734 (1943), the Court overturned a conviction for violation of the Foreign Agent Reporting Act. In discussing the imposition of criminal sanctions for the failure to provide information, the Court stated:

> One may be subjected to punishment for crime in the Federal Courts only for the commission or omission of an act defined by statute, or by regulation having legislative authority, and then only if punishment is authorized by Congress . . . (citation omitted). Penal sanctions attach here for willful failure to file a statement when required or if the registrant "willfully omits to state any material fact required to be stated." Unless the statutes fairly read, demands the disclosure of the information which Petitioner failed to give he cannot be subjected to the statutory penalties.
>
> *Viereck v., United States, supra,* at 241.

The statute and regulations at issue here have been recognized by three Courts of Appeals and the Comptroller General as being vague and unclear in prohibiting the structuring of currency transactions so as to circumvent or avoid a $10,000.00 transaction. Given the state of the law with its ambiguous provisions criminal sanctions should not be allowed to stand.

While it cannot be denied that the Government desires information concerning the movement of currency, such a desire does not warrant abandonment of constitutional

standards. As Judge Hill stated in his dissenting opinion in this case:

> I do not question for a moment that this country is entitled to be, and ought to be, aware of large cash dealings. As I have previously observed, currency is the life blood of organized crime. *United States v. Arends,* 776 F.2d 262, 265 (11th Cir. 1985) (Hill, J., specially concurring). What the appellant here has done is clearly contrary to the wishes of the government. However, one of the things which sets this nation apart from so many others is that no one may be convicted of a crime merely for acting contrary to the wishes of the government. Before conduct may be held to constitute a crime, that conduct must be the subject of a criminal statute which; "define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary or discriminatory enforcement." *Kolender v. Lawson,* 461 U.S. 352, 357, 103 S. Ct. 1855, 1858, 75 L.Ed.2d 903 (1983). The applicable Treasury regulations do not satisfy this definiteness requirement with respect to the transactions here in question.

U.S. v. Giancola, 783 F.2d 1549 (11th Cir.) 1986 at 1553.

REQUISITE INTENT

The major factual issue in dispute during the trial was the requisite intent on the part of Petitioners. It was the position of Petitioners that the evidence clearly established that they acted to structure transactions so as to avoid the requirements of any bank to file a CTR.

The Petitioners contended, however, that to convict, the evidence had to establish that the Petitioners knew that it

was illegal to structure currency transactions so as to circumvent or avoid the CTR requirements. The requisite intent for a conviction of a criminal violation under the currency reporting laws involves the element of willfulness. 31 U.S.C. § 5322(a) and (b). A conviction for conspiracy to circumvent the currency laws should therefore encompass the same degree of intent. *See, e.g., Ingram v. U.S.*, 360 U.S. 672, 79 S. Ct. 1314, 3 L.Ed.2d 1503 (1959). The trial court recognized that willfulness was the requisite intent to be proved by the Government.

The trial court over strenuous objection, however, gave a jury instruction on the issue of intent which defined willfulness in such a fashion as to nullify that requirement. The disputed instruction reads as follows:

> In order to convict Mr. Giancola or Mr. Pifer of the conspiracy charged in either Count One or Count Ten of the indictment, you must find beyond a reasonable doubt that Mr. Giancola and Mr. Pifer committed the acts allegeldy constituting the offense knowingly and willfully.
>
> An act is done knowingly if it is done voluntarily and intentionally and not because of mistake or accident or other innocent reason.
>
> An act is done willfully if it is done voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say, with the purpose either to disobey or disregard disregard the law. Specific intent as the term implies means more than a general intent to commit the act. To establish specific intent the evidence must establish beyond a reasonable doubt that the defendant knowingly did an act with a purpose to violate the law.
>
> Therefore, before defendant may be convicted of the conspiracy as alleged in Count One of the in-

dictment or the conspiracy alleged in Count Ten of the indictment it is essntial that the evidence demonstrate beyond a reasonable doubt:

First, the existence of an agreement knowingly formed between the defendants, Francis Martin Giancola and Charles A. Pifer at or about the time alleged in the particular count under consideration to combine efforts to deposit in excess of $10,000 in financial institutioins in the State of Florida in a manner such that no single deposit would exceed $10,000.

Second, that when the defendants entered into the agreement, they knew that financial institutions were required by law to report to the Secretary of the Treasury all currency transactions involving a deposit in excess of $10,000.

Third, that the purpose and intent of the defendants in entering into the agreement with each other was to deposit an aggregate sum in excess of $10,000 in financial institutions in such a manner as to avoid the currency transactions reporting requirements and thereby to interfere with the Treasury Department's function of receiving currency transaction reports from financial institutions which reports place the Secretary on notice of deposits of currency in excess of $10,000 . . .

Trial transcript Vol. 4, pp. 741-743.

The Court has described willfulness in criminal tax matters as meaning an intentional violation of a known legal duty. *See, United States v. Pomponio,* 429 U.S. 10, 975 S. Ct. 22, 50 L.Ed.2d 12 (1976).

The Eleventh Circuit has previously ruled that violations of failure to file a CTR requires proof of willfulness. That is the defendants had knowledge of the reporting re-

quirements and with that knowledge had the specific intent to commit the crime. *United States v. Eisenstein,* 731 F.2d 1540 (11th Cir. 1984).

The trial court's instruction required that the jury only find the Petitioners structured currency transactions in amounts of less than $10,000.00 to avoid the CTR. A proper instruction would require the Government to prove that Petitioners knew it was illegal to structure transactions in amounts of less than $10,000.00 rather than simply knowing they were structuring and that a $10,000.00 transaction triggered a return.

With the increasing use of currency law violations as the basis for prosecution, direction from the Supreme Court on the proper intent required for conviction is imperative not only for law enforcement but also to protect citizens against improper prosecutions and convictions.

The currency laws have the potential to affect vast numbers of citizens whether they engage in illegal activities or not. Therefore, because cash and currency is inherently legal, criminal violations involving its use must be specificially bottomed on willful violations of the law. The Government must be required to show not only that the citizen knew he was acting to avoid CTR rquirements, but also that such actions are illegal.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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September, 1986

APPENDIX A

UNITED STATES of America,
Plaintiff-Appellee,

v.

Francis Martin GIANCOLA, and
Charles A. Pifer, II,
Defendants-Appellants.

No. 84-3861.

United States Court of Appeals,
Eleventh Circut.

March 12, 1986.

* * * * *

Appeals from the United States District Court for the Middle District of Florida.

Before HILL, Circuit Judge, TUTTLE and HENDERSON*, Senior Circuit Judges.

TUTTLE, Senior Circuit Judge:

This is an appeal from a conviction following a jury trial on two counts of conspiracy to defraud the United States in violation of 18 U.S.C. § 371. Section 371 makes it a crime for two or more persons to conspire either to commit any offense against the United States, or to defraud the United States. Appellants here have been convicted of conspiring to defraud the United States by structuring certain currency transactions totalling several hundred thou-

*See Rule 3(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.

sand dollars to thwart the ability of the United States to obtain information concerning currency transactions of more than $10,000 under 31 U.S.C. § 5323(a).

I. STATEMENT OF THE CASE

In pertinent part, Section 5313(a) of Title 31 U.S.C. provides that:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency . . . in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution . . . shall file a report on the transaction at the time and in the way the Secretary prescribes.

The relevant part of 5312(a)(2) of Title 31 U.S.C. provides:

> In this subchapter . . .
>
> (2) "Financial institution" means (A) an insured bank (as defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(h)).

Appellants were indicted for having conspired to defraud the United States on two counts, one dealing with certain transactions made by appellants on October 28, 1983 and October 31, 1983, during which two days they together purchased for currency cashier's checks totalling $88,740, and on the second count for having on June 11 and June 27, 1984, engaged in it similar transactions, this time purchasing for currency $179,122 worth of money orders from 32 banks or savings and loan institutions or branches thereof. In both types of purchases, they used some fictitious names.

There was ample proof that during several of these purchases on a single day, the two appellants, from the same cache of currency, bought either two cashier's checks for more than $10,000 at different branches *of the same bank* or bought money orders for more than $10,000 from different branches *of the same bank*. There was ample evidence of the fact that they did this for the purpose of preventing any "financial institution" from having to file a Currency Transaction Report ("CTR"). Such a report is required under regulations issued by the Secretary of Treasury under the authorization of Section 5313:

> Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which invovles a transaction in currency of more than $10,000.

31 C.F.R. § 103.22(a).[1]

There is no question that appellants did engage in a single transaction, although disguised as more than one, on the same day at branches of the same bank during the period covered by each count of the indictment.

II. ISSUE

We consider the only issue to be decided is whether structuring the transactions in amounts of less than $10,000 in different branches of the same bank for the purpose of avoiding the currency reporting requirements of 31 U.S.C. § 5313 constitutes a conspiracy to defraud the United States, in violation of 18 U.S.C. § 371.

---

[1]This regulation has been amended but we consider appellant's conduct under the regulation as it existed at the time of the transactions.

III. DISCUSSION

The appellants contend that there is no obligation on any financial institution to file a CTR unless a currency transaction for more than $10,000 in a single day is carried on at a single branch of a bank or savings institution. They base this argument on the definition section of the regulation at 31 C.F.R. § 103.11. There, a "financial institution" is defined as:

> Each agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below:
>
> (1) A bank (except bank credit card systems);
>
> (2) A broker or dealer in securities;
>
> (3) A person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks;
>
> (4) A person who engages as a business in the issuing, selling, or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively or as an incidental part of another business;
>
> (5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others;
>
> (6)(i) A casino or gambling casino licensed as a casino or gambling by a State or local government and having gross annual gaming revenue in excess of $1,000,000.
>
> (ii) A casino or gambling casino includes the principal headquarters and any branch or places of business of the casino or gambling casino.

Appellants' argument is that since each branch of a bank is defined in the regulation as being a "financial institution," the transaction which is dealt with in the statute and regulation must be a transaction solely within a particular branch or office.

The government challenges this argument on two bases. The first is its argument that if a person has in his possession a substantial sum of currency in excess of $10,000 and, in order to prevent a bank or one of its branches from having to file a CTR with respect to his turning the currency into paper, he divides it up into several different packages and over a period of time, makes an exchange of currency for a cashier's check or a money order in any number of financial institutions, he is guilty, because he attempted to thwart the financial institution from having to file a CTR which he ought not to have done because he ought to have incorporated all of his transactions into one transaction in a single bank. The second basis for the government's argument is that where a person on the same day makes an exchange out of one fund of cash in two branches of the same bank for cashier's checks or money orders, this is a single transaction with a single financial institution and the two exchanges should be considered together to require "the bank" to file a CTR covering the transaction.

The government's first argument is overbroad. As we have already found in *United States v. Denemark,* 779 F.2d 1559 (1986), the mere fact that an individual has a substantial amount of cash in his possession which he wishes to turn into cashier's checks or other evidence of indebtedness and does so at different banks over a period of days, cannot amount to a crime becaue his actions amounted

to several transactions instead of a single transaction as is contemplated under the statute.

However, we have here facts which distinguish this case from *Denemark*, because here, there were several single transactions on the same day, with the same bank, albeit with different branches of the bank. We agree with the government's contention that such exchanges made by a single person or his partners or associates in a single day, in differnet branches of the same bank, do require the bank to file a CTR. This is true, because the statute, under which the regulation is issued, requires the filing of a CTR by a "financial institution" which is defined in the statute as, among other things, "a bank." (31 U.S.C. § 5312(a)(2). As stated by the district court in *United States v. Sanchez Vasquez,* 585 F.Supp. 990 (N.D.Ga.1984):

> While the regulations do govern when a CTR must be filed, the court disagrees with defendant's interpretation of the term "financial institution." The court believes that the statute, 31 U.S.C. 5312, and the regulations 31 C.F.R. 103.11, must be read together in determining the meaning of the term "financial institution."
>
> The court determines that the correct interpretation of the implementing regulations in defining the term, "financial institution" is a bank, including each of its branches. Thus, if the financial institution (i.e., the bank or in particular any of its branches) is aware of its cash transaction in excess of $10,000 on a particular day, the bank or its particular branch must file a CTR. Likewise, if there are multiple cash transactions at different branches of the same financial institution (i.e., bank) which exceed $10,000, then that particular bank must file a CTR. . . .

Since we do not construe a regulation in a manner that would place it in conflict with the statue by which it is authorized, we construe the regulation here as did the court in *Sanchez Vazquez.*

The facts here are much akin to those in *United States v. Tobon-Builes,* 706 F.2d 1092 (11th Cir.1983) and *United States v. Thompson,* 603 F.2d 1200 (5th Cir.1979). In those two cases, a bank was caused to consider as separate transactions, exchanges by or on behalf of a single person at the same time, in the same institution. The only difference here is that the exchanges occurred in different branches of the same bank. We conclude that under the statute and the implementing regulation it was incumbent upon the bank to file a CTR with respect to these transactions which occurred on the same day, and the actions of the appellants in structuring the exchanges by making them in different branches of the same institution and by the use of false names was sufficient to constitute the crime for which they were charged.

We have also considered appellant's argument that the statutory regulatory requirements that banks report currency transactions in excess of $10,000 violates the bank customer's Fourth and Fifth Amendment rights and that the trial court erred in its instruction to the jury as to the existence of *mens rea.* We find no error with respect to the trial court's rejection of these contentions.

The judgments are AFFIRMED.

HILL, Circuit Judge, dissenting:

Contrary to the majority opinion, I find this case controlled by *United States v. Denemark,* 779 F.2d 1559 (11th Cir.1986), as opposed to *United States v. Tobon-Builes,*

706 F.2d 1092 (11th Cir.1983), and thus would reverse the convictions. In *Tobon-Builes,* Tobon and a companion acting on his behalf went to several banks and at each made virtually simultaneous cash purchases of pairs of cashiers checks, each check being for approximately $9000. The couple attempted to conceal their scheme by entering the banks separately and using a variety of false names. Though disguished as two transactions, we held the pairs of purchases in each bank were in fact only one transaction for purposes of CTR reporting requirement as the purchases of the companion were merely the acts of Tobon through an agent.

Unlike *Tobon-Builes,* in the case before us appellants performed each transaction personally. Appellants can be credited with no transaction at any single branch exceeding $10,000. It is thus impossible for me to conclude that the appellants, who had structured their transactions so as not to become involved in the law requiring currency transactions reports, were put on clear notice that such structuring constituted a conspiracy to defraud the United States in violation of 18 U.S.C. § 371. Our admonition in *Denemark* is equally applicable here. "No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *United States v. Denemark,* 779 F.2d 1559, 1563 (11th Cir. 1986) (quoting *Lanzetta v. New Jersey,* 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 (1939)).

I do not question for a moment that this country is entitled to be, and ought to be, aware of large cash dealings. As I have previously observed, currency is the life blood of

organized crime. *United States v. Arends,* 776 F.2d 262 (11th Cir.1985) (Hill, J., specially concurring). What the appellant here has done is clearly contrary to the wishes of the government. However, one of the things which sets this nation apart from so many others is that no one may be convicted of a crime merely for acting contrary to the wishes of the government. Before conduct may be held to constitute a crime, that conduct must be the subject of a criminal statute which "define[s] the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary or discriminatory enforcement." *Kolender v. Lawson,* 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983). The applicable Treasury regulations do not satisfy this definiteness requirement with respect to the transactions here in question. Perhaps the Congress or the Secretary or both ought further to address this problem.[1]

Based upon its particular facts, *Tobon-Builes* is in my view a unique case. As already noted, it was found that at each bank there had been only one cash transaction, involving more than $10,000, accomplished by the defendant acting himself and, simultaneously, through an agent. The transaction at each bank thus should have generated a CTR and Tobon, through his actions, caused each bank to fail to file the required CTRs. *Tobon-Builes* thus constitutes a narrow holding and ought not to be expanded to cover separate transactions which were deliberately not covered by the treasury regulations merely

[1]We recognize that there has been a recent amendment to 31 C.F.R. § 103.22(a) which may or may not be sufficient to pull transactions such as those in this case within the purview of the CTR reporting requirement in the future.

because the separate transactions probably accomplished something contrary to wishes of the Secretary, no matter how beneficial to the country it would be if those wishes were abided.

In *Denemark, supra,* we refused to hold that an individual who had conducted fourteen cash transactions with fourteen different banks during the same day could be pulled within the purview of the CTR reporting requirement by having all the cash transactions considered as a single exchange. In light of the applicable regulatory language cited by the majority, I would apply a similar rule where the transactions occurred at different branches of the same bank. Accordingly, I DISSENT from the majority opinion.

APPENDIX B

FOR THE ELEVENTH CIRCUIT

No. 84-3861

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCIS MARTIN GIANCOLA and
CHARLES A. PIFER, II,

Defendants-Appellants.

Appeal from the United States District Court for the Middle District of Florida

---

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC
(Opinion _____, 11 Cir., 198 ____, ____ F.2d ____).

Before HILL and HENDERSON, Circuit Judges and TUTTLE, Senior Circuit Judge.

PER CURIAM:

( ) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banch (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure;

Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ James C. Hill
United States Circuit Judge

COURT OF APPEALS
ELEVENTH CIRCUIT
FILED
JUL 29 1986
MIGUEL J. CORTEZ
CLERK

UNITED STATES COURT OF APPEALS
Eleventh Circuit
50 Spring Street, S.W.
Atlanta, Georgia 30303-3147

Miguel J. Cortez
Clerk

July 29, 1986

TO ALL PARTIES LISTED BELOW:

No. 84-3861 USA v. Giancola and Pifer

This is to advise that an order has this day been entered denying the petition ( ) for rehearing.

____ The Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the petition ( ) for rehearing en banc has also been denied.

X___ No member of the panel nor judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure, Eleventh Circuit Rule 26), the petition ( ) for rehearing en banc has also been denied.

See Rule 41, F.R.A.P. and Eleventh Circuit Rule 27 for issuance and stay of the mandate.

Sincerely,

MIGUEL J. CORTEZ, CLERK

In Replying Give Number
Of Case And Names of Parties
(Rev. 10/84)

By: /s/ Linda Pritt
Deputy Clerk

APPENDIX C
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

FRANCIS MARTIN GIANCOLA
and CHARLES A. PIFER II

No. 84-71-Cr-Orl-11
[18 USC § 1001; 5 yrs. and/or $10,000]
[18 USC § 371; 5 yrs. and/or $10,000]

The Grand Jury charges:

COUNT ONE

That beginning at on or about October 28, 1983, and continuing thereafter to on or about November 2, 1983, in the Middle District of Florida, and elsewhere

FRANCIS MARTIN GIANCOLA
and CHARLES A. PIFER, II

defendants herein, did unlawfully, and intentionally combine, conspire, confederate, and agree among themselves and each other and with others known and unknown to the grand jury to defraud the United States Department of the Treasury, and to violate Title 18, United States Code, Section 1001, that is by knowingly and wilfully concealing and causing to be concealed, by trick, scheme, or device, material facts in a matter within the jurisdiction of the Department of the Treasury of the United States, specifically FRANCIS MARTIN GIANCOLA and CHARLES A. PIFER, II and others unknown to the grand jury, by trick, scheme, or device operated to conceal, concealed, and caused to be concealed from the In-

ternal Revenue Service, an agency of the Treasury Department of the United States the existence, source, origin, and transfer of approximately $186,000.00 in currency, by the purchaes of cashier's checks, teller checks, bank checks, or money orders in amounts less than $10,000.00 from different financial institutions, often two or more branch offices of the same institution, generally using a false name as purchaser, in the Middle District of Florida and elsewhere to be deposited at the Bank Leumi Le Israel, Miami, Florida, for the purpose of avoiding the financial institutions' filing of Currency Transaction Reports ("CTRs") (IRS Form 4789) for currency transactions in excess of $10,000.00 as required by Title 31, United States Code, Section 5313(a) and Volume 31, Code of Federal Regulations, Section 103.22(a); in violation of Title 18, United States Code, Section 1001.

Overt Acts

In furtherance of said conspiracy, and in order to effect the objectives thereof, the defendants and other co-conspirators, committed the following overt acts in the Middle District of Florida and elsewhere.

(1) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,500.00, from the Barnett Bank, Fashion Square Branch, Orlando, Florida, using the name of Don Scarfo as purchaser.

(2) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,500.00, from the First National Bank of Kissimmee, East Broadway Branch, Kissimmee, Florida, using the name of Lou Testa as purchaser.

(3) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,500.00, from the First National Bank of Kissimmee, East Vine Street Branch, Kissimmee, Florida, using the name of Dom Scarfo as purchaser.

(4) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $5,700.00, from the First Federal Savings and Loan of Osceola, Broadway Street Branch, Kissimmee, Florida, using the name of Walter Foster as purchaser.

(5) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,500.00, from the First Federal Savings and Loan of Osceola, Mill Creek Branch, Kissimmee, Florida, using the name of Bill Shea as purchaser.

(6) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $5,600.00, from the First Federal Savings and Loan of Osceola, Bermuda Street Branch, Kissimmee, Florida, using the name William Judson as purchaser.

(7) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $5,500.00, from the Flagship Bank of Kissimmee, Main Office, Kissimmee, Florida, using the name of Walter Johnson as purchaser.

(8) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $5,800, from the

Flagship Bank of Kissimmee, Mill Creek Branch, Kissimmee, Florida, using the name of Ralph Walston as purchaser.

(9) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,180.00, from the Sun Bank, Central Park Branch, Orlando, Florida, using the name of William Finster as purchaser.

(10) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $5,400.00, from the Sun Bank, Kissimmee, Florida, using the name of Harold Foster as purchaser.

(11) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $3,900.00, from the Sun Bank, Fashion Square Branch, Orlando, Florida, using the name of Jim Miller as purchaser.

(12) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $5,720.00, from the Sun Bank, East Orlando branch, Orlando, Florida, using the name of John Lorins as purchaser.

(13) On or about October 28, 1983, Francis Martin Giancola attempted to purchase with currency a $6,500.00 cashier's check at First Federal of Seminole, Forest City, Florida.

(14) On or about October 31, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,500.00, from the Barnett Bank, Apopka, Florida, using the name of Norman Acosta as purchaser.

(15) On or about October 31, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a cashier's check in the amount of $6,480.00, from the Freedom Savings, Apopka, Florida, using the name of William Randel as purchaser.

(16) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from the Sun Bank, Apopka, Florida, using the name of Frank Ward as purchaser.

(17) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500, from the Tucker State Bank, Apopka, Florida, using the name of Jim Renzo as purchaser.

(18) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from the Barnett Bank, Forest City, Florida, using the name of Walt Murray as purchaser.

(19) On or about October 31, 1983, Charles A. Pifer, II, purchased with currency a teller check in the amount of $6,540.00, from the Flagship of Seminole, Forest City, Florida, using the name Chuck Miller as purchaser.

(20) On or about October 31, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a teller check in the amount of $6,500.00, from the Florida Federal Savings and Loan, Forest City, Florida, using the name of Al Hinson as purchaser.

(21) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from the Sun Bank, Forest City, Florida, using the name of A. Soto as purchaser.

(22) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with cur-

rency a cashier's check in the amount of $6,500.00, from the Ellis Bank, Altamonte Springs, Florida, using the name of D. Haas as purchaser.

(23) On or about October 28, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency a bank check in the amount of $6,410.00, from the Pioneer Federal, Altamonte Springs, Florida, using the name of Ralph Johnson as purchaser.

(24) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from the Barnett Bank, Altamonte Springs, Florida, using the name of Al Renaud as purchaser.

(25) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from the Freedom Savings, Altamonte Springs, Florida, using the name of Al Moods as purchaser.

(26) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,380.00, from the Sun Bank, Altamonte Springs, Florida, using the name of William Foster as purchaser.

(27) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from The First, F.A., Altamonte Springs, Florida, using the name of Lee Bass as purchaser.

(28) On or about October 31, 1983, Francis Martin Giancola purchased with currency a cashier's check in the amount of $6,500.00, from the Freedom Savings, Casselberry, Florida, using the name of F. Giancola as purchaser.

(29) On or about October 31, 1983, Francis Martin Giancola and/or Charles A. Pifer, II, purchased a cashier's check in the amount of $6,500.00, from the Sun Bank, Casselberry, Florida, using the name of Jerry Garmien as purchaser.

(30) On or about October 31, 1983, Francis Martin Giancola purchased a cashier's check in the amount of $6,000.00, from the Bank of Central Florida, Maitland, Florida, using the name of Dom Scarfo as purchaser.

(31) On or about November 2, 1983, in Miami, Florida, the defendants caused a person unknown to the grand jury to deposit the checks totally mentioned in Overt Acts one through thirty, to be deposited to account number 108-388-12 at the Bank Leumi Le Israel, Miami, Florida.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO THROUGH NINE

On or about October 28 through October 31, 1983, in the Middle District of Florida,

FRANCIS MARTIN GIANCOLA
and CHARLES A. PIFER, II

knowingly and wilfully concealed and covered up and caused to be concealed and covered up by a trick, scheme, or device material facts in a matter within the jurisdiction of the Department of the Treasury of the United State, to wit: the trick, scheme, or device operated to conceal or cover up from the Internal Revenue Service, an agency of the Treasury Department of the United States, the existence, source, origin, and transfer of the amount of currency specified below in each count by the purchase of two or more cashier's checks, bank checks, or money orders,

each of said checks in amounts of less than $10,000 from the financial institutions specified below, and generally using a false name as the purchaser or remitter of said checks, for the purpose of avoiding the financial institutions's filing of Currency Transactions Report (URS Form 4789) for transactions in excess of $10,000 as required by Title 31, United States Code, Section 5313(a) and Volume 31, Code of Federal Regulations, Section 103.22(a).

Count	Date	Financial Institution	Amount of Check(s)	Purported Purchaser
2	10/28/83	FIRST NATIONAL BANK, KISSIMMEE		
		East Broadway Br.	$6,500.00	Lou Testa
		East Vine Street, Br. Kissimmee, FL	$6,500.00	Dom Scarfo
		TOTAL	$13,000.00	
3	10/28/83	FIRST FEDERAL S&L of OSCEOLA,		
		Broadway Street Br.	$5,700.00	Walter Foster
		Mill Creek Br.	$6,500.00	Bill Shea
		Bermuda Street Br. Kissimmee, FL	5,600.00	William Judson
		TOTAL	$17,800.00	
4	10/28/83	FLAGSHIP BANK OF KISSIMMEE, Main Ofc. Kissimmee, FL	$5,500.00	Walter Johnson
		Mill Creek Br. Kissimmee, Fl	$5,800.00	Ralph Walston
		TOTAL	$11,300.00	

5	10/28/83	SUN BANKS		
		Central Park Br. Orlando, FL	$6,180.00	William Finster
		Fashion Square Br. Orlando, FL	$3,900.00	Jim Miller
		East Orlando Br., Orlando, FL	$5,720.00	John Lorins
		Kissimmee Br. Kissimmee, FL	$5,400.00	Harold Foster
		TOTAL	$21,200.00	
6	10/31/83	BARNETT BANK –		
		Apopka Br., (FL)	$6,500.00	Norman Acosta
		Forest City Br. (FL)	$6,500.00	Walt Murray
		Altamonte Springs Br. (FL)	$6,500.00	Al Renaud
		TOTAL	19,500.00	
7	10/31/83	FREEDOM SAVINGS & LOAN-		
		Apopka Br., (FL)	$6,480.00	William Randel
		Altamonte Springs, Br. (FL)	$6,500.00	Al Moos
		Casselberry Br. (FL)	$6,500.00	F. Giancola
		TOTAL	$19,480.00	

8	10/31/83	SUN BANK		
		Apopka Br. (FL)	$6,500.00	Frank Ward
		Forest City Br. (FL)	6,500.00	A. Soto
		Altamonte Springs Br. (FL)	$6,380.00	William Foster
		Casselberry Br. (FL)	$6,500.00	Jerry Garmien
		TOTAL	$25,880.00	
9	10/31/83	FLORIDA FEDERAL SAVINGS & LOAN		
		Forest City Br. (FL)	$6,500.00	Al Hinson
		Casselberry Br. (FL)	$6,500.00	
		TOTAL	13,000.00	

All in violation of Title 18, United States Code, Sections 2 and 1001.

COUNT TEN

Beginning on or about June 11, 1983, and continung thereafter to on or aboutr June 27, 1983, in the Middle District of Florida,

FRANCIS MARTIN GIANCOLA
and CHARLES A. PIFER, II

defendants herein, did unlawfully, and intentionally combine, conspire, confederate, and agree among themselves and each other and with others unknown to the grand jury to defraud the United States Department of the Treasury, and to violate Title 18, United States Code, Section 1001, that is by knowingly and wilfully concealing and causing to be concealed, by trick, scheme or device, material facts in a matter within the jurisdiction of the Department of

the Treasury of the United States, specifically FRANCIS MARTIN GIANCOLA and CHARLES A. PIFER, II and others unknown to the grand jury, by trick, scheme, or device operated to conceal, concealed and caused to be concealed from the Internal Revenue Service, an agency of the Treasury Department of the United States the existence, source, origin and transfer of in excess of $200,000 in currency by the purchase of money orders in amounts less than $10,000 from different financial institutions, often at different branches of the same institution, and generally using a false name as purchaser of the money order, if a name was requested by the financial institution, in the Middle District of Florida and elsewhere for the purpose of avoiding the financial institutions' filing of currency Transaction Reports ("CTRs") (IRS Form 4789) as required by Title 31, United States Code, Section 5313(a) and Volume 31, Code of Federal Regulations, Section 103.22(a); in violation of Title 18, United States Code, Section 1001.

Overt Acts

In furtherance of said conspiracy, and in order to effect the objectives thereof, the defendants and other co-conspirators, committed the following overt acts in the Middle District of Florida and elsewhere.

On or about June 11, 1984, Charles A. Pifer, II purchased with currency four money orders in the amount of $1,000.00 each for a total of $4,000.00, from the American Savings and Loan Association of Florida, Jacaranda Plaza, Venice, Florida, using the name of William Destens as purchaser.

(2) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchaser with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $1.50 for a total of $6,001.50, from the Citizens Federal Savings and Loan Association, Venetian Plaza, Venice, Florida.

(3) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency five money orders in the amount of $1,000.00 each plus incurring a money order charge of $2.50 for a total of $5,002.50, from the Coast Federal Savings and Loan, Venice Gardens Office, Venice, Florida.

(4) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency five money orders in the amount of 1,000.00 each plus incurring a money order charge of $3.00 for a total of $5,003.00, from the Coast Federal Savings and Loan, Venice, Florida.

(5) On or about June 11, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $9.00 for a total of $6,009.00, from the First City Federal, Venice Shopping Center, Venice, Florida, using the name of Tom Ford as purchaser.

(6) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency five money orders in the amount of $1,000.00 each for a total of $5,000.00, from the First City Federal, Southgate Plaza, Sarasota, Florida

(7) On or about June 11, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money charge order

charge of $1.50 for a total of $6,001.50, from the First Federal Savings and Loan of Englewood, Venice, Florida, using the name of Geller.

(8) On or about June 11, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money charge order charge of $3.00 for a total of $6,003.00, from the First National Bank of Florida, Venice Street Br., Venice, Florida.

(9) On or about June 11, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.00 for a total of $6,003.00, from the First National Bank of Florida, Tamiami Trail Br., Venice, Florida.

(10) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency five money orders in the amount of $1,000.00 each plus in curring a money order charge of $7.50 for a total of $5,007.50, from the First National Bank of Venice, Nokomis Br., Venice, Florida.

(11) On or about June 11, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money charge of $7.50 for a total of $5,007.50, from the First National Bank of Venice, Osprey Branch, Venice, Florida.

(12) On or about June 11, 1984, Charles A. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.00 for a total of $6,003.00, from the First Presidential Savings, Venice, Florida.

(13) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency six money orders in the amount of $1,000.00 each plus in-

curring a money order charge of $1.50 for a total of $6,001.50, from the First Venice Savings & Loan Association, 1788 S. Tamiami Trail, Venice, Florida, using the name of Renzo as purchaser.

(14) On or about June 11, 1984, Charles A. Pifer, II, purchased with currency five money orders in the amount of $1,000.00 each for a total of $5,000.00, from the First Venice Savings and Loan Association, 270 S. Tamiami Trail, Venice, Florida, using the name of Harris as purchaser.

(15) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency two money orders in the amount of $2,500.00 each plus incurring a money order charge of $1.50 for a total of $5,001.50, from the Naples Federal Savings and Loan Association, Venice, Florida, using the name of Hank Aderno or Hank Adorno as purchaser.

(16) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II purchased with currency two money orders in the amount of $2,800.00 and $3,200.00 plus incurring a money order charge of $1.50 for a total of $6,001.50, from the Naples Federal Savings and Loan Association, Laurel Office, Nokomis, Florida, using the name of J. Renzo as purchaser.

(17) On or about June 11, 1984, Francis Martin Giancola and/or Charles A. Pifer, II, purchased with currency two money orders in the amount of $2,500.00 each plus incurring a money order charge of $6.00 for a total of $5,006.00, from the Southeast Bank, East Venice Banking Center, Venice, Florida.

(18) On or about June 11, 1984, Francis Martin Giancola purchased with currency two money orders in the amount of $2,800.00 and $3,200.00 plus incurring a mo-

ney order charge of $3.00 for a total of $6,003.00, from the Southeast Bank, Venice Banking Center, Venice, Florida, using the name of J. Renzo as purchaser.

(19) On or about June 11, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $9.00 for a total of $6,009.00, from the United First Federal Savings and Loan, Bird Bay Office, Venice, Florida.

(20) On or about June 11, 1984, Charles A. Pifer, II, purchased with currency five money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.75 for a total of $5,003.75, from the United First Federal Savings and Loan, Venice Office, Venice, Florida.

(21) On or about June 11, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency five money orders in the amount of $1,000.00 each plus incurring a money order charge of $7.50 for a total of $5,007.50, from the United First Federal Savings and Loan, South Venice Office, Venice, Florida.

(22) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $6.00 for a total of $6,006.00, from the Barnett Bank of Pasco County, U.S. Highway 19, Hudson, Florida.

(23) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.00 for a total of $6,003.00, from the Barnett Bank of Pasco County, Fivay Road, Hudson, Florida.

(24) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $900.00 each and one money order in the amount of $600.000 for a total of $6,000.00, from the California Federal Savings and Loan, Spring Hill, Florida.

(25) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $12.00 for a total of $6,012.00, from the Center Banc Savings, Hudson, Florida.

(26) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $6,00 for a total of $6,006.00, from the Citizen's First National Bank of Hernando County, Spring Hill, Florida, using the name of Doug Jameson as purchaser.

(27) On or about June 27, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.00 for a total of $6,003.00, from the First Federal Savings & Loan Association of Brooksville, Weeki Wachee Branch, Spring Hill, Florida, using the name of Weston as purchaser.

(28) On or about June 27, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.000 for a total of $6,003.00, from the First Federal Savings and Loan Association of Brooksville, Highway 50, Brooksville, Florida, using the name of Harmon as purchaser.

(29) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency three money orders in the amount of $2,000.00 each plus incurring a money order charge of $1.50 for a total of $6,001.50, from the First Federal Savings and Loan Association of Brooksville, Downtown Branch, Brooksville, Florida, using the name of Geller as purchaser.

(30) On or about June 27, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $1.50 for a total of $6,001.50, from the First Savings Bank of Florida, F.S.B., Hudson Branch, Florida, using the name of F. Scarfo as purchaser.

(31) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency five money orders in the amount of $1,000.00 each plus incurring a money order charge of $1.25 for a total of $5,001.25, from the First Savings Bank of Florida, F.S.B., Spring Hill Branch, Spring Hill, Florida, using the name of Stephen Ward as purchaser.

(32) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency five money orders in the amount of $1,000.00 each plus incurring a money order charge of $2.50 for a total of $5,002.50, from the Fortune Federal Savings and Loan Association, Spring Hill Branch, Spring Hill, Florida, using the name of Jerry Stapleton as purchaser.

(33) On or about June 27, 1984, Francis Martin Giancola purchased with currency three money orders in the amount of $2,000,000 each plus incurring a money order charge of $3.00 for a total of $6,003.00, from the Goldome Savings Association, Hudson, Florida, using the name of Saal as purchaser.

(34) On or about June 27, 1984, Francis Martin Giancola purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $6.00 for a total of $6,006.00, from the Mid-State Federal Savings and Loan Association, Hudson, Florida.

(35) On or about June 27, 1984, Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $6.00 for a total of $6,006.00, from the N.C.N.B. – Bayonet Branch, Hudson, Florida.

(36) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus incurring a money order charge of $6.00 for a total of $6,006.00, from the N.C.N.B., State Road 52, Hudson, Florida, using the name of Royal as purchaser.

(37) On or about June 27, 1984, Charles P. Pifer, II, purchased with currency three money orders in the amount of $1,000.00 each plus incurring a money order charge of $3.00 for a total of $3,003.00, from the Pioneer Federal, Hudson, Florida.

(38) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency two money orders in the amount of $3,000.00 each plus incurring a oney order charge of $3.00 for a total of $6,003.00, from the Southeast Bank, Hudson Banking Center, Hudson, Florida, using the name of Art F. Dodger as purchaser.

(39) On or about June 27, 1984, Francis Martin Giancola and/or Charles P. Pifer, II, purchased with currency six money orders in the amount of $1,000.00 each plus in-

curring a money order charge of $3.00 for a total of $6,003.00, from the Home Federal Bank of Florida, FSB, Spring Hill Office, Spring Hill, Florida.

All in violation of Title 18, United States Code, Section 371.

COUNT ELEVEN THROUGH TWENTY-TWO

On or about June 11, through June 27, 1984, in the Middle District of Florida,

FRANCIS MARTIN GIANCOLA
and CHARLES A. PIFER, II

knowingly and wilfully concealed and covered up and caused to be concealed and covered up by a trick, scheme, or device material facts in a matter within the jurisdiction of the Department of the Treasury of the United States, to wit: the trick, scheme, or device operated to conceal or cover up from the Internal Revenue Service, an agency of the Treasury Department of the United States, the existence, source, origin, and transfer of the amount of currency specified below in each count by the purchase of money orders, each of said money orders in amounts of less than $10,000.00 from the financial institutions specified below, and generally using a false name as the purchaser or remitter of said money orders, if a name was requested by the financial institution, for the purpose of avoiding the financial institution's filing of Currency Transactions Report (IRS Form 4789) as required by Title 31, United States Code, Section 5313(a), and Volume 31, Code of Federal Regulations, Section 103.22(a).

Count	Date	Financial Institution	Amount of Money Order(s)	Purported Purchaser if any
11	6/11/84	COAST FEDERAL	$1,000.00	
		SAVINGS & LOAN	$1,000.00	
		Venice Gardens	$1,000.00	
		Office, Venice, FL	$1,000.00	
			$1,000.00	
		Money Order Charge	$ 2.50	
		Sub-Total	$5,002.50	
		COAST FEDERAL	$1,000.00	
		SAVINGS & LOAN	$1,000.00	
		Tamiami Trail	$1,000.00	
		Venice, FL	$1,000.00	
			$1,000.00	
		Money Order Charge	$ 3.00	
		Sub-Total	$4,003.00	
		TOTAL	$10,005.50	
12	6/11/84	FIRST CITY FEDERAL	$1,000.00	Tom Ford
		Venice Shopping	$1,000.00	
		Center, Venice, FL	$1,00.00	
			$1,000.00	
			$1,000.00	
			$1,000.00	
		Money Order Charge	$ 9.00	
		Sub-Total	$6,009.00	
		FIRST CITY FEDERAL	$1,000.00	J. Richardson
		Southgate Plaza	$1,000.00	
		Sarasota, FL	$1,000.00	
			$1,000.00	
			$1,000.00	
		Sub-Total	$5,000.00	
		TOTAL	$11,009.00	

Count	Date	Financial Institution	Amount of Money Order(s)	Purported Purchaser if any
13	6/11/84	FIRST NATIONAL BANK OF FLORIDA, Venice Street Br., Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 3.00	
		Sub-Total	$6,003.00	
		FIRST NATIONAL BANK OF FLORIDA, Tamiami Trial Br., Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 3.00	
		Sub-Total	$6,003.00	
		TOTAL	$12,006.00	
14	6/11/84	FIRST NATIONAL BANK OF VENICE, Nokomis Br., Venice, FL.	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 7.50	
		Sub-Total	$5,007.50	
		FIRST NATIONAL BANK OF VENICE, Osprey Br., Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 7.50	
		Sub-Total	$5,007.50	
		TOTAL	$10,015.00	

Count	Date	Financial Institution	Amount of Money Order(s)	Purported Purchaser if any
15	6/11/84	FIRST VENICE SAVINGS & LOAN ASSN., 1788 Tamiami Trail, Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	Renzo
		Money Order Charge	$ 1.50	
		Sub-Total	$6,001.50	
		FIRST VENICE SAVINGS & LOAN ASSN., 270 S. Tamiami Trail, Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	Harris
		Sub-Total	$5,000.00	
		TOTAL	$11,001.50	
16	6/11/84	NAPLES FEDERAL SAVINGS & LOAN Assn., Venice, FL	$2,500.00 $2,500.00	Hank Aderno or Hank Adorno
		Money Order Charge	$ 1.05	
		Sub-Total	$5,001.50	
	6/11/84	NAPLES FEDERAL SAVINGS & LOAN ASSN., Laurel Office, Nokomis, FL	$2,800.00 $3,200.00	J. Renzo
		Money Order Charge	$ 1.50	
		Sub-Total	$6,001.50	
		TOTAL	$11,003.00	

Count	Date	Financial Institution	Amount of Money Order(s)	Purported Purchaser if any
17	6/11/84	SOUTHEAST BANK,	$2,500.00	
		East Venice Banking Center, Venice, FL	$2,500.00	
		Money Order Charge	$ 6.00	
		Sub-Total	$5,006.00	
		SOUTHEAST BANK,	$2,800.00	J. Renzo
		Venice Banking Center, Venice, FL	$3,200.00	
		Money Order Charge	$ 3.00	
		Sub-Total	$6,003.00	
		TOTAL	$11,009.00	
18	6/11/84	UNITED FIRST FEDERAL SAVINGS & LOAN, Bird Bay Office, Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 9.00	
		Sub-Total	$6,009.00	
		UNITED FIRST FEDERAL SAVINGS & LOAN, Venice Br., Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 3.75	
		Sub-Total	$5,003.75	
		UNITED FIRST FEDERAL SAVINGS & LOAN, South Venice, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 7.50	
		Sub-Total	$5,007.50	
		TOTAL	$16,020.25	

Count	Date	Financial Institution	Amount of Money Order(s)	Purported Purchaser if any
19	6/27/84	BARNETT BANK OF Pasco County, U.S. Highway 19, Hudson, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 6.00	
		Sub-Total	$6,006.00	
		BARNETT BANK of Pasco County, Fivay Road, Hudson, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 3.00	
		Sub-Total	$6,003.00	
		TOTAL	$12,009.00	
20	6/27/84	FIRST FEDERAL SAVINGS & LOAN ASSN. of Brooksville, Weeki Wachee Branch, Spring Hill, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	Weston
		Money Order Charge	$ 3.00	
		Sub-Total	$6,003.00	
		FIRST FEDERAL SAVINGS & LOAN ASSN. of Brooksville, Highway 50 Br., Brooksville, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	Harmon
		Money Order Charge	$ 3.00	
		Sub-Total	$6,003.00	
		FIRST FEDERAL SAVINGS & LOAN ASSN. of Brooksville, Downtown Br., Brooksville, FL	$2,000.00 $2,000.00 $2,000.00	Geller
		Money Order Charge	$ 1.50	
		Sub-Total	$6,001.50	
		TOTAL	$18,007.50	

Count	Date	Financial Institution	Amount of Money Order(s)	Purported Purchaser if any
21	6/27/84	FIRST SAVINGS BANK of FLORIDA, FSB Hudson Branch Hudson, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	F. Scarfo
		Money Order Charge	$ 1.50	
		Sub-Total	$6,001.50	
		FIRST SAVINGS BANK of FLORIDA, FSB Spring Hill Branch Spring Hill, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	Stephen Ward
		Money Order Charge	$ 1.25	
		Sub-Total	$5,001.25	
		TOTAL	$11,002.75	
22	6/27/84	NCNB - Bayonet Branch, Hudson, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	
		Money Order Charge	$ 6.00	
		Sub-Total	$6,006.00	
		NCNB - State Rd 52 Branch, Hudson, FL	$1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00 $1,000.00	Royal
		Money Order Charge	$ 6.00	
		Sub-Total	$6,006.00	
		TOTAL	$12,012.00	

All in violation of Title 18, United States Code, Sections 2 and 1001.

A TRUE BILL

/s/ Richard M. Burke
Foreman

ROBERT W. MERKLE
United States Attorney

By /s/ Garry J. Stegeland
Garry J. Stegeland
Assistant United States Attorney

By /s/ Thomas W. Turner
Thomas W. Turner
Managing Assistant U.S. Attorney

APPENDIX D
UNITED STATES DISTRICT COURT for MIDDLE DISTRICT OF FLORIDA-ORLANDO

Defendant CHARLES A. PIFER, II

DOCKET NO. 84-71 Cr-Orl-11

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date December 6th 1984. Law Offices of Mark L. Horwitz, P.A. DEC 10 1984.

Counsel

Without Counsel However the Court advised defendant or right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX With Counsel Mark L. Horwitz, Esquire.

Plea

Guilty, and the court being satisfied that there is a factual basis for the plea. Nolo Contendere, XX Not Guilty.

M'FILM ROLL #52 0416.

Finding & Judgment

There being a verdict of Not Guilty. Defendant is discharged XX Guilty. On Counts One and Ten of the Indictment.

Defendant has been convicted as charged of the offense(s) of conspiring with others to defraud the United States Department of the Treasury, by a scheme to conceal from the Internal Revenue Service the existence, source, origin, and transfer of currency, by the purchase of cashier's checks, teller checks, bank checks and money orders in amounts less than $10,000.00 from different financial institutions, using false names as purchaser, for the purpose of avoiding the financial institutions' filing of Currency Transaction Reports (IRS Form 4789) for currency transactions in excess of $10,000.00 as required by Title 31, United States Code, Section 5313(a) and Volume 31, C.F.R., Section 103.22(a); all in violation of Title 18, United States Code, Section 371, as charged in Counts One and Ten of the Indictment.

Not guilty, Defendant is discharged

Sentence or Probation Order

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted.

IT IS ADJUDGED that on Count One of the Indictment, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) years, or until otherwise discharged as provided by law.

IT IS ADJUDGED that on Count Ten of the Indictment, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS, or until

otherwise discharged as provided by law. The sentence of imprisonment imposed on Count Ten shall run concurrently with the sentence of imprisonment imposed on Count One.

IT IS FURTHER ADJUDGED that the commencement of execution of sentence shall be deferred until 12 o'clock, noon, Friday, 18 January 1985 at which time the defendant at his own expense shall report to the institution to be designated by the Attorney General for service of sentence.

IT IS FURTHER ADJUDGED that Mr. Pifer's Oral Motion to Stay the Execution of Sentences and for the Setting of Bail Pending Appeal is denied for reasons stated on the record at the time of sentencing.

/s/ _____

JUDGE

Additional Conditions of Probation

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Commitment Recommendation

The court orders commitment to the custody of the Attorney General and recommends, to the Attorney General and the Bureau of Prisons that the defendant be incarcerated at Federal Prison Camp, Eglin Air Force Base, Florida 32542.

Signed by U.S. District Judge
JOHN A. REED, JR.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

FILED

Dec 7 10.34 AM '84

Clerk U.S. District Court
Middle District of Florida
Orlando, Florida

APPENDIX E
UNITED STATES DISTRICT COURT for MIDDLE DISTRICT OF FLORIDA-ORLANDO

Defendant FRANCIS MARTIN GIANCOLA

DOCKET NO. 84-71 Cr-Orl-11

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date December 6th 1984.

Counsel

Without Counsel However the Court advised defendant or right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

XX With Counsel Mark L. Horwitz, Esquire.

Plea

Guilty, and the court being satisfied that there is a factual basis for the plea. Nolo Contendere, XX Not Guilty.

Finding & Judgment

There being a verdict of Not Guilty. Defendant is discharged XX Guilty. On Counts One and Ten of the Indictment.

Defendant has been convicted as charged of the offense(s) of conspiring with others to defraud the United

States Department of the Treasury, by a scheme to conceal from the Internal Revenue Service the existence, source, origin, and transfer of currency, by the purchase of cashier's checks, teller checks, bank checks and money orders in amounts less than $10,000.00 from different financial institutions, using false names as purchaser, for the purpose of avoiding the financial institutions' filing of Currency Transaction Reports (IRS Form 4789) for currency transactions in excess of $10,000.00 as required by Title 31, United States Code, Section 5313(a) and Volume 31, C.F.R., Section 103.22(a); all in violation of Title 18, United States Code, Section 371, as charged in Counts One and Ten of the Indictment.

Sentence or Probation Order

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted.

IT IS ADJUDGED that on Count One of the Indictment, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) years, or until otherwise discharged as provided by law.

IT IS ADJUDGED that on Count Ten of the Indictment, the defendant shall be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS, or until otherwise discharged as provided by law. The sentence of imprisonment imposed on Count Ten shall run concurrently with the sentence of imprisonment imposed on Count One.

IT IS FURTHER ADJUDGED that the commencement of execution of sentence shall be deferred until 12 o'clock, noon, Friday, 18 January 1985 at which time the defendant shall at his own expense shall report to the institution to be designated by the Attorney General for service of sentence.

IT IS FURTHER ADJUDGED that Mr. Giancola's Motion to Stay the Execution of Sentences and for the Setting of Bail on Appeal is denied for reasons stated on the record at the time of sentencing.

/s/

JUDGE

Additional Conditions of Probation

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Commitment Recommendation

The court orders commitment to the custody of the Attorney General and recommends, to the Attorney General and the Bureau of Prisons that the defendant be incarcerated at Federal Prison Camp, Eglin Air Force Base, Florida 32542.

Signed by U.S. District Judge
JOHN A. REED, JR.

M'FILM ROLL #52
DOCUMENT #52 0416.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

FILED

Dec 7 10.20 AM '84

Clerk U.S. District Court
Middle District of Florida
Orlando, Florida

Supreme Court, U.S.
FILED
NOV 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-491

In the Supreme Court of the United States

OCTOBER TERM, 1986

FRANCIS M. GIANCOLA
AND CHARLES A. PIFER, II, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Solicitor General
WILLIAM F. WELD
Assistant Attorney General
KAREN SKRIVSETH
Attorney
Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the Currency and Foreign Transactions Reporting Act (the Act), 31 U.S.C. (& Supp. II) 5311 *et seq.*, and the regulations promulgated thereunder, prohibit structuring currency transactions in order to cause a financial institution to fail to file Currency Transaction Reports.

2. Whether under the Act and implementing regulations different branches of the same bank constitute a single "financial institution."

3. Whether the trial court's instructions on specific intent were correct.

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In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-491

FRANCIS M. GIANCOLA

AND CHARLES A. PIFER, II, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION

The opinion of the court of appeals (Pet. App. 1a-10a) is reported at 783 F.2d 1549.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 1986. A petition for rehearing was denied on July 29, 1986 (Pet. App. 11a-12a). The petition for a writ of certiorari was filed on September 25, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Florida, petitioners were convicted on two counts of conspiracy to defraud the United States, in violation of 18 U.S.C. 371.[1] They were each sentenced to two concurrent five-year terms of imprisonment (Pet. App. 44a-47a).

1. Under federal law, a financial institution is required to file a Currency Transaction Report (CTR) whenever a customer makes a currency deposit in excess of $10,000. 31 U.S.C. 5313; 31 C.F.R. 103.22(a) (1985).[2] The evidence at trial, which was summarized by the court

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[1] Before submitting the case to the jury, the trial court dismissed 20 counts charging violations of 18 U.S.C. 1001 (Pet. 5; Pet. App. 14a-39a).

[2] 31 U.S.C. 5313(a) provides in relevant part:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes.

31 C.F.R. 103.22(a) (1985) provides:

> Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary * * * and all information called for in the forms shall be furnished * * *.

Each Currency Transaction Report form contains the following provision (4 R.511):

> * * *Multiple transactions by or for any person which in any one day total more than $10,000 should be treated as a single transaction, if the financial institution is aware of them.

of appeals (Pet. App. 2a-3a) and is not in dispute (Pet. 12), showed that on single days in October 1983, and again in June 1984, petitioners used currency to purchase cashier's checks or money orders from separate branches of particular banks. The purchases aggregated to more than $10,000 per bank, although petitioners structured their transactions so that no branch received more than $10,000 in currency on any one day. By structuring the transactions in this fashion, petitioners sought to "prevent[] [the] 'financial institution[s]' from having to file a Currency Transaction Report" (Pet. App. 3a).

2. The court of appeals affirmed by a divided vote (Pet. App. 1a-10a). It held (Pet. App. 4a-7a) that under Section 5313 and the implementing regulations, different branches of the same bank constitute a single "financial institution." The court therefore agreed with the government's contention that "single transactions on the same day, with the same bank, albeit with different branches of the bank * * * do require the bank to file a CTR" (Pet. App. 6a). Thus, the court held that petitioners' conduct in structuring the exchanges by making them in different branches of the same institution and by using false names was sufficient to constitute the crime of conspiracy to defraud the United States (Pet. App. 7a). The court of appeals also concluded that the trial court's instructions on specific intent were not erroneous (*ibid.*).[3]

Judge Hill dissented (Pet. App. 7a-10a). In his view the case was governed by the Eleventh Circuit's previous decision in *United States* v. *Denemark*, 779 F.2d 1559 (1986). There, the court of appeals had held that a defendant who makes cash transactions aggregating to more than $10,000, but consummated at different banks, cannot be convicted under Section 5313. Judge Hill concluded

[3] In addition, the court of appeals rejected Fourth and Fifth Amendment challenges to the currency reporting provisions (Pet. App. 7a). These claims are not presented in the petition.

that "a similar rule [applies] where the transactions occurred at different branches of the same bank" (Pet. App. 10a). Suggesting that "the Congress or the Secretary or both ought further to address this problem" (Pet. App. 9a (footnote omitted)), Judge Hill would have reversed the convictions.

ARGUMENT

1. Petitioners first contend (Pet. 6-12) that this Court should review the government's theory that it is illegal to structure currency transactions so as to avoid the currency reporting requirements. The same claim has been made in a petition now pending before the Court in *Heyman* v. *United States*, No. 86-5365. In our brief in opposition in that case, we noted that there has been some division among the circuits on this and related issues arising from prosecutions under Section 5313.[4] Congress, however, has recently enacted the Money Laundering Control Act of 1986, which is included as Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570 (Oct. 27, 1986). The Money Laundering Control Act was expressly designed to overrule the cases that conflict with the result reached by the court of appeals here. The new law should deprive the statutory issue presented in the petition of any continuing significance. Accordingly, petitioners' claim, which in any event is meritless even under the former provisions of 31 U.S.C. 5313 *et seq.*, does not warrant further review by this Court.

a. Under Section 5313 and its accompanying regulations, only financial institutions have a duty to file CTR's in connection with cash transactions. Several courts of appeals have nevertheless recognized that under 18 U.S.C. 2(b) a defendant may still be held liable for causing a financial institution to violate its statutory duties. See,

[4] We have furnished counsel with a copy of our brief in opposition in the *Heyman* case.

e.g., *United States* v. *Heyman*, 794 F.2d 788 (2d Cir. 1986); *United States* v. *Cook*, 745 F.2d 1311 (10th Cir. 1984), cert. denied, 469 U.S. 1220 (1985); *United States* v. *Puerto*, 730 F.2d 627 (11th Cir.), cert. denied, 469 U.S. 847 (1984); *United States* v. *Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983). See also *United States* v. *Thompson*, 603 F.2d 1200 (5th Cir. 1979). Other courts have taken a contrary view, holding that because Section 5313 and the applicable regulations do not themselves impose on third parties a duty to file CTR's, 18 U.S.C. 2(b) cannot be read to impose criminal liability on persons who, by structuring their deposits, cause a financial institution to fail to file a CTR. See, *e.g.*, *United States* v. *Anzalone*, 766 F.2d 676 (1st Cir. 1985)[5]; *United States* v. *Varbel*, 780 F.2d 758 (9th Cir. 1986);[6] *United States* v. *Larson*, 796 F.2d 244 (8th Cir.

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[5] In *Anzalone*, the defendant deposited more than $25,000 on a single day at the Haymarket Cooperative Bank. Thereafter, on separate days, he deposited a total of $75,000 more; each of those individual deposits, however, was less than $10,000, and thus no CTR was filed by the bank. The defendant was charged with failing himself to file a CTR and, in addition, with causing the bank to fail to file a CTR. The court of appeals reversed defendant's convictions and dismissed the indictment. Neither Section 5313 nor the applicable regulations, the court held, impose on a bank customer the duty to file a CTR. The court also refused to uphold the defendant's conviction under 18 U.S.C. 2(b). It held (766 F.2d at 683) that the bank "lacked knowledge of the[] 'structured' nature" of the deposits, and was thus innocent of failing to report the deposits. Since the bank was innocent, the court reasoned, the defendant could not be held liable for causing the bank to violate Section 5313.

[6] In *Varbel*, the defendant arranged to have a series of deposits made at different banks and, to some extent, on different days. Although the deposits aggregated to more than $49,000, each deposit was less than $10,000 and thus none of the banks involved filed a CTR for any of the cash transactions. 780 F.2d at 759. The court of appeals held that the language of 31 U.S.C. 5313 as well as the governing regulations makes clear that "only financial institutions are required to file reports" (780 F.2d at 762). Following *Anzalone*, the court held

1986).[7]

Whatever the merit of the decisions from the First, Eighth, and Ninth Circuits in construing Section 5313, Congress has totally revised that statute by enacting the Money Laundering Control Act of 1986. The explicit purpose of the new Act was to overrule the decisions in *Anzalone* and *Varbel* and to codify the Eleventh Circuit's decision in *Tobon-Builes*—on which the same court substantially relied in the present case. Section 1354 of the Act, entitled "Structuring Transactions To Evade Reporting Requirements Prohibited," creates a new section of Title 31 (Section 5324), which provides, in pertinent part, as follows:

> No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—
>
> (1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);
>
> (2) cause or attempt to cause a domestic financial

---

that the defendant could not be held liable under Section 2(b), since the banks were not aware that deposits in excess of $10,000 had been made. The Ninth Circuit has applied its holding in *Varbel* in two subsequent cases. See *United States* v. *Reinis*, 794 F.2d 506 (1986); and *United States* v. *Dela Espriella*, 781 F.2d 1432 (1986).

[7] In *Larson*, the defendant purchased cashier's checks worth a total of $44,500 from a single bank on a single day; each transaction, however, was for less than $10,000 and thus no CTR was filed. Thereafter, again on a single day, the defendant purchased an additional $53,300 in cashier's checks, also by making individual deposits in amounts just under $10,000. Once more, no CTR's were filed by the banks involved. 796 F.2d at 245-246. Following *Anzalone* and *Varbel*, the court held that due process did not permit the government to extend the reporting requirements of Section 5313 to a bank customer. The court also held that since the banks were unaware of the defendant's structured transactions the defendant could not be liable under 18 U.S.C. 2(b).

institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

By its terms, the statute imposes criminal liability for causing a financial institution to fail to file a CTR as well as for structuring deposits, as petitioners did here, for the purpose of evading the reporting requirements of Section 5313. In formalizing these statutory obligations, Congress made clear that its purpose was to overrule the First and Ninth Circuit decisions in *Anzalone* and *Varbel*. The Senate Committee on the Judiciary, reporting favorably on an identical provision in S. 2683, an earlier version of the money laundering bill, stated (S. Rep. 99-433, 99th Cong., 2d Sess. 21-22 (1986)):

> Under present law, money launderers are successfully prosecuted in some judicial circuits for causing financial institutions not to file reports on multiple currency transactions totaling more than $10,000 or causing financial institutions to file incorrect reports. In such cases, the actual money launderers are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and section 1001 (concealing from the Government a material fact by a trick, scheme, or device). For example, in *United States v. Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983), the Eleventh Circuit Court of Appeals upheld a conviction under 18 U.S.C. 1001 where the defendants had engaged in a money laundering scheme in which they had structured a series of currency transactions, each one less than $10,000 but totaling more than $10,000, to evade the reporting requirements. * * * In contrast, the First Circuit

> Court of Appeals, in *United States v. Anzalone*, 766 F.2d 676 (1st Cir. 1985), the Eleventh Circuit Court of Appeals in *United States v. Denemark*, 779 F.2d 1559 (11th Cir. 1986), and the Ninth Circuit Court of Appeals in *United States v. Varbel*, 780 F.2d 758 (9th Cir. 1986) have held that structuring currency transactions to avoid the reporting requirements did not violate 18 U.S.C. section 1001.
>
> Subsection (h) would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone*, *Varbel* and *Denemark*. It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

The House intended precisely the same results when it formulated a virtually identical version of the money laundering provisions. The Committee on Banking, Finance and Urban Affairs stated (H.R. Rep. 99-746, 99th Cong., 2d Sess. 18-19 (1986)):

> In some judicial circuits, money launderers have been successfully prosecuted for causing financial institutions not to file reports on such multiple currency transactions. In such cases, defendants are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and Section 1001 (concealing from the government a material fact by a trick, scheme, or device).[8]

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[8] Here, the House Report cited the Eleventh Circuit's decision in *Tobon-Builes* (H.R. Rep. 99-746, *supra*, at 18 n.1).

> In contrast, other cases have held that the Act and its regulations impose no duty on the customer to inform the financial institution of the structured nature of the transactions, that the reporting duties are placed solely upon the financial institution, and therefore, only a financial institution can directly violate the reporting requirements.[9]
>
> The Committee believes that Section 2 of H.R. 5176 would resolve the legal issues raised by the various circuit courts by expressly subjecting to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, it would create the offense of structuring a transaction to evade the reporting requirements, without regard for whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

In light of this new legislation, there is no reason to expect that the previous conflict among the circuits will persist. Accordingly, review by this Court is unwarranted.

b. In any event, the court of appeals' decision is correct under the law as it existed prior to the enactment of the Money Laundering Control Act.

The court of appeals did not address in this case the underlying question whether a third party who causes a bank to breach its reporting obligations may be held liable under Section 5313, having resolved that issue in its earlier decision in *Tobon-Builes*. There, the court of appeals had held that although the duty to file CTR's is imposed only on financial institutions, a third party who causes the

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[9] For this proposition the House Report cited, inter alia, *Anzalone* and *Varbel* (H.R. Rep. 99-746, *supra*, at 19 n.2).

institution to violate its duties may be convicted under 18 U.S.C. 2(b).[10] That holding comports with the broad language of Section 2(b), which extends liability to anyone who "causes an act to be done which if directly peformed by him or another would be an offense against the United States." As the reviser's note to 18 U.S.C. 2 states, the aiding and abetting statute

> removes all doubt that one who puts in motion or assists in the illegal enterprise but causes the commission of an indispensable element of the offense by an innocent agent or instrumentality, is guilty as a principal even though he intentionally refrained from the direct act constituting the completed offense.[11]

This construction of Section 2(b) applies here as well. Although petitioners' structured deposits prevented various banks from learning of their duty to file CTR's, petitioners' success in that endeavor cannot shield them from liability under Section 2(b), and, in turn, from liability for conspiracy under 18 U.S.C. 371.

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[10] Correspondingly, a third party who conspires to cause a bank to violate its reporting obligations may be convicted under 18 U.S.C. 371. See *United States* v. *Sans*, 731 F.2d 1521, 1530-1532 (11th Cir. 1984), cert. denied, 469 U.S. 1111 (1985); *United States* v. *Lester*, 363 F.2d 68, 73-74 (6th Cir. 1966), cert. denied, 385 U.S. 1002 (1967).

[11] The reviser's note also indicates that Section 2 was intended to embrace this Court's decision in *United States* v. *Giles*, 300 U.S. 41, 43 (1937). There, the Court upheld the conviction of a bank teller under a statute that prohibited bank employees from "mak[ing] any false entry in any book * * * of such Federal reserve bank or member bank." The defendant was convicted of having caused a bookkeeper for the bank to make false deposit entries in the bank's ledger, by wrongfully withholding from circulation certain deposit slips prepared for particular bank customers. Although the defendant had not himself made the false entries, and although the "innocent bookkeeper was the teller's * * * unconscious agent," the Court held that "the statute [was] broad enough to include deliberate action from

2. In passing, petitioners also challenge (Pet. 7, 9) the court of appeals' holding that different branches of the same bank constitute a single "financial institution" under Section 5313. Again, the new Money Laundering Act vitiates any continuing importance of this issue, as do certain proposed regulations recently issued by the Secretary. In any event, the court of appeals correctly resolved this issue under the law as it then existed.

a. By enacting the new money laundering statute, Congress made clear that it intended to prohibit all structured currency transactions intended to evade the reporting requirements—whether consummated at separate branches or even at entirely different banks. The language of the structuring prohibitions, quoted above, is not limited in any way to transactions consummated at a single branch. Moreover, the Senate Judiciary Committee stated (S. Rep. 99-433, *supra*, at 22) that the new "offense of structuring a transaction to evade the reporting requirements" does not even depend on "whether an individual transaction is, itself, reportable." For example, the Committee specified (*ibid.*):

> [A] person who converts $18,000 in currency to cashier's checks by purchasing two $9,000 cashier's checks at two different banks or on two different days with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability.

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which a false entry by an innocent intermediary necessarily follows" (300 U.S. at 48-49). So, too, for Section 2(b): it applies even where the defendant, by his actions, causes an innocent intermediary unwittingly to violate the law. Accord *United States* v. *Ruffin*, 613 F.2d 408, 412-413 (2d Cir. 1979); *United States* v. *Catena*, 500 F.2d 1319, 1322-1323 (3d Cir.), cert. denied, 419 U.S. 1047 (1974); *United States* v. *Levine*, 457 F.2d 1186, 1188-1189 (10th Cir. 1972); *United States* v. *Lester*, 363 F.2d 68, 72 (6th Cir. 1966), cert. denied, 385 U.S. 1002 (1967).

Accord H.R. Rep. 99-746, *supra*, at 19. Because the structuring prohibitions embrace transactions even at separate banks, they plainly cover transactions at different branches of the same bank. Under the new Money Laundering Act, therefore, the statutory claim addressed by the court of appeals has been dispositively resolved.[12]

b. In addition to the new legislation, the Secretary on August 25, 1986, issued proposed regulations to amend 31 CFR Pt. 103. See 51 Fed. Reg. 30233 (1986). These regulations, for which comments must be received by November 24, 1986, will amend 31 C.F.R. 103.22 by expressly providing that "[a] financial institution includes all of its domestic branch offices." The proposed regulation further deprives the statutory issue raised in the petition of any continuing importance.

c. Even under the law as it then existed, the court of appeals decided this issue correctly. 31 U.S.C. 5312(a)(2)(A) defines a "financial institution" as "an insured bank"—a term that plainly embraces a bank and all of its branches. Accord *United States* v. *Sanchez Vazquez*, 585 F. Supp. 990, 992-993 (N.D.Ga. 1984). To be sure, the regulations implementing Title 31 define "financial institution" to include "[e]ach * * * branch" of a bank. But this regulation simply means that bank branches must file CTR's when they receive more than $10,000 in cash on a given day; it does not relieve the parent bank from its own obligation to file a CTR when its branches,

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[12] In fact, one of the cases that Congress intended to overrule in this new legislation was the Eleventh Circuit's own decision in *Denemark*, holding that currency transactions at separate banks are not covered by Section 5313. See S. Rep. 99-433, *supra*, at 21-22; H.R. Rep. 99-746, *supra*, at 18-19 & n.2. The dissenting judge in the present case believed that petitioners' transactions—at separate branches of the same bank—were governed by *Denemark*, pending some effort by "the Congress or the Secretary * * * to address this problem" (Pet. App. 9a (footnote omitted)). Congress has now done so.

taken together, receive in excess of $10,000 in currency from a single source on a single day. See *Sanchez Vazquez*, 585 F. Supp. at 993. By preventing the parent banks from learning that their branches had received large sums of cash from a single source, and thus causing the parent banks to fail to file CTR's, petitioners conspired to violate the currency reporting laws.

3. Petitioners' challenge (Pet. 12-15) to the trial court's specific intent instructions is frivolous. The court expressly stated that to convict petitioners the jury would have to find that petitioners acted "with the specific intent to do something the law forbids, that is to say, with the purpose either to disobey or disregard the law" (Pet. 13). The court also instructed that "[t]o establish specific intent the evidence must establish beyond a reasonable doubt that the defendant knowingly did an act with a purpose to violate the law" (*ibid.*). Finally, the court added, "the purpose and intent of the defendants in entering into the agreement with each other" must be proved to have been "to interfere with the Treasury Department's function of receiving currency transaction reports from financial institutions" (Pet. 14). These instructions, "viewed in the context of the overall charge" (*Cupp* v. *Naughten*, 414 U.S. 141, 147 (1973)), were plainly sufficient to charge specific intent. See *United States* v. *Haldeman*, 559 F.2d 31, 112-117 (D.C. Cir. 1976), cert. denied, 431 U.S. 933 (1977); *United States* v. *Patrick*, 542 F.2d 381, 388-389 (7th Cir. 1976), cert. denied, 430 U.S. 931 (1977). See also 2 E. Devitt & C. Blackmar, *Federal Jury Practice and Instructions* § 27.05, at 7 (1977).

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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